

## UNITED STATES OF AMERICA,

Civil Action No. 90-2119 (JAF)

## SECOND MODIFIED CONSENT DECREE

**Defendant.**

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## I. BACKGROUND

The Puerto Rico Administration of Corrections ("PRAC" or "Defendant") has owned and operated wastewater treatment plants ("WWTPs") at (1) the Guayama Penal Institution ("Guayama"), located in Guayama, Puerto Rico, (2) the Zarzal Penal Camp ("Zarzal"), located in Río Grande, Puerto Rico, (3) Guavate Penal Camp ("Guavate"), located in Cayey, Puerto Rico, and (4) the Guerrero Therapeutic Community ("Guerrero"), located in Aguadilla, Puerto Rico. Defendant has also operated, and continues to operate, (5) a wastewater pump station and pipe system ("Pump System"), which collects wastewater from the Ponce Correctional Complex ("Ponce") and transports it to the Puerto Rico Aqueduct and Sewer Authority's ("PRASA's") Ponce Regional WWTP for treatment.

On August 17, 1990, Plaintiff United States of America ("United States"), on behalf of the U.S. Environmental Protection Agency ("EPA"), filed a Complaint in this action, alleging that Defendant violated Sections 301, 309 and 402 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311, 1319, 1342, and National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA for operation of Defendant's Guayama, Zarzal and Guavate WWTPs.

On June 3, 1992, this Court entered a Consent Decree ("1992 Decree") resolving the United States' claims in the 1990 Complaint. The 1992 Decree required PRAC to pay \$1,000,000.00 in civil penalties and to take corrective actions at the Guayama, Guavate, and Zarzal WWTPs. PRAC paid the civil penalties, developed a corrective action plan, but failed to timely comply with the corrective action provisions at these three WWTPs. Defendant has certified that, thereafter, in September 1993, Guayama was connected to PRASA's Guayama

wastewater collection system and the Guayama WWTP ceased discharging its effluent to waters of the United States.

On January 24, 1997, the United States on behalf of EPA filed a Supplemental Complaint in this action, alleging that Defendant violated the Act and its NPDES permit with respect to the Guerrero WWTP, and violated the Act by discharging pollutants from the Ponce Pump System to waters of the United States without a permit.

On February 14, 1997, this Court entered a Supplemental Consent Decree ("1997 Decree"), which superceded the 1992 Decree and resolved all outstanding claims in the 1990 Complaint and the 1997 Supplemental Complaint.

The 1997 Decree required, inter alia, that Defendant: pay \$625,000.00 as a stipulated penalty; perform corrective actions according to a specified schedule to bring the Guavate, Zarzal, Guerrero and Ponce facilities into compliance with Defendant's NPDES permits and the Act; expend at least \$600,000.00 to perform Additional Remedial Actions ("ARAs"); comply with specified interim effluent limitations at the Guavate, Zarzal and Guerrero WWTPs; submit quarterly status reports and certifications of completion regarding all requirements related to the Guavate, Zarzal and Guerrero WWTPs, the Ponce Pump System and the ARAs; and pay stipulated penalties in the event of noncompliance with any terms of the 1997 Decree.

Defendant failed to comply with various requirements of the 1997 Decree, including: (1) corrective action requirements related to the Zarzal, Guavate and Guerrero WWTPs, the Ponce Pump System and the ARAs; (2) interim effluent limitations at the Zarzal, Guavate and Guerrero WWTPs; (3) the submission of reports and certifications regarding the three WWTPs, the Ponce Pump Station, and the ARAs; and (4) the payment of stipulated penalties.

Defendant has certified that the following corrective actions were finally taken: (1) on December 12, 1997, the Guerrero WWTP was connected to PRASA's regional wastewater treatment system and ceased discharging effluent to waters of the United States; (2) on December 29, 2000, the Zarzal WWTP was connected to PRASA's regional wastewater treatment system and ceased discharging effluent to waters of the United States; and (3) on February 28, 2005, Guavate was closed altogether and its WWTP ceased discharging effluent to waters of the United States.

The Parties recognize, and the Court by entering this Second Modified Consent Decree finds, that this Decree has been negotiated by the Parties in good faith and will avoid further litigation between the Parties, and that the Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 309 of the Act, 33 U.S.C. § 1319, and over the Parties. Venue lies in this District pursuant to Sections 301 and 309 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311, 1319, and 28 U.S.C. §§ 1391(b)-(c), 1395(a), because Defendant resides and is located in this judicial district, and because the violations set forth in the Supplemental Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Supplemental Complaint states claims upon which relief may be granted pursuant to Section 309 of the Clean Water Act ("Act"), 33 U.S.C. § 1319.

### III. APPLICABILITY

3. The obligations of this Decree apply to and are binding upon the United States, and upon the Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the ARA facilities, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Decree are implemented. Any transfer of ownership or operation of such facility to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by all provisions of this Decree applicable to that facility, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, Defendant shall provide a copy of this Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the District of Puerto Rico, and the United States Department of Justice, in accordance with Section XIX (Notices). Any attempt to transfer ownership or operation of the ARA facilities without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as

well as to any contractor retained to perform work required under this Decree. Defendant shall specify in any such contract that performance of the work must be done in conformity with the terms of this Decree.

6. In any action to enforce this Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

#### IV. DEFINITIONS

7. Terms used in this Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

a. "1992 Decree" shall mean the Consent Decree executed by the United States and Defendant and entered by this Court on June 3, 1992, in the above-captioned action.

b. "1997 Decree" shall mean the Supplemental Consent Decree executed by the United States and Defendant and entered by this Court on February 14, 1997, in the above-captioned action, which replaced and superceded in all respects the 1992 Decree.

c. "Act" shall mean the Clean Water Act, 33 U.S.C. §§ 1251-1387.

d. "ARA" shall mean the Additional Remedial Action required by Section VII and Appendix A of this Consent Decree, or any modification thereof, unless specified in Section I (Background) of this Decree as the Additional Remedial Actions required pursuant to Section V of the 1997 Decree.



e. "ARA facilities" shall mean the pipelines, pump stations and other structures, equipment and appurtenances to be constructed pursuant to Section VII and Appendix A of this Consent Decree, and any modification thereof.

f. "Calendar Quarter" shall mean the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.

g. "Commonwealth" shall mean the Commonwealth of Puerto Rico.

h. "Complaint" shall mean the original Complaint filed in 1990 by the United States in this action.

i. "Compliance Information" shall mean all documents and information related to Defendant's compliance (or non-compliance) with the terms of the 1992 Decree, the 1997 Decree, this Decree, Defendant's NPDES permits for the Guayama, Zarzal, Guavate and Guerrero WWTPs, and the Act, and related to the condition of, actions at and modifications to the Ponce Pump System, from January 1, 1997 through the date PRAC executes this Consent Decree, including, but not limited to, any information contained in any report or certification submitted to the United States under the 1992 Decree or the 1997 Decree.

j. "Consent Decree" or "Decree" shall mean this Second Modified Consent Decree and all appendices attached hereto (listed in Section XXVIII), unless otherwise specified. Pursuant to Paragraph 77, upon the Effective Date, this Decree replaces and supercedes the 1997 Decree in its entirety.

k. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall

on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the close of business of the next working day.

l. “Defendant” or “PRAC” shall mean Defendant Puerto Rico Administration of Corrections, an instrumentality of the Commonwealth of Puerto Rico, created by legislative enactment in 1974 to administer an integrated correctional system, Laws of Puerto Rico Annotated, Title 4, §§ 1101, *et. seq.*, and any successor departments, agencies or instrumentalities of the Commonwealth.

m. “DOJ” shall mean the United States Department of Justice and any successor departments or agencies of the United States.

n. “Effective Date” shall mean the date upon which this Decree is entered by the Court, as provided by Section XX.

o. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

p. “Field Inspector” shall mean an employee or agent of Defendant responsible for ensuring that Defendant complies with this Decree, as provided in Paragraph 30.

q. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral or a letter.

r. “Parties” shall mean the United States and Defendant.

s. “Ponce Pump System” or “Ponce facility” shall mean the wastewater collection and transport system, including pump station, pipe system and appurtenances thereto, and any modifications thereof, used for the collection and transport of wastewater from PRAC's Ponce Correctional Complex, located in Ponce, Puerto Rico.

t. "PRASA" shall mean the Puerto Rico Aqueduct and Sewer Authority of the Commonwealth of Puerto Rico.

u. "Responsible Official" shall mean the principal executive officer or the ranking elected official of Defendant, or a duly authorized representative thereof, as provided in 40 C.F.R. § 122.22.

v. "Section" shall mean a portion of this Decree identified by a roman numeral, unless otherwise provided.

w. "Supplemental Complaint" shall mean the Supplemental Complaint filed in 1997 by the United States in this action.

x. "United States" shall mean the United States of America, acting on behalf of EPA.

y. "WWTP" shall mean wastewater treatment plant.

#### **V. STIPULATED PENALTY FOR NONCOMPLIANCE WITH 1997 DECREE**

8. Within 30 days after the Effective Date, Defendant shall pay the sum of \$500,000.00 as a stipulated penalty for noncompliance with the 1997 Decree, together with interest accruing from the date on which this Decree is lodged with the Court through the date of payment, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Payment shall be made via FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant, following lodging of this Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Puerto Rico. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-3364/1 and

the civil action number of this case) to the United States in accordance with Section XIX (Notices).

#### VI. CORRECTIVE ACTIONS

9. PRAC shall inspect the mechanical bar screen unit at the Ponce Pump System once each weekday to identify any malfunctions therein. Within 10 days after discovering any such malfunction, Defendant shall submit to EPA a written report describing the malfunction and any planned repairs thereto. Within 30 days after discovering any such malfunction, Defendant shall repair the malfunction. Defendant may seek relief under Section XIV (Force Majeure) of this Consent Decree for any delay in the receipt of a part timely requested which is necessary to make such repair. Within 10 days after repairing any such malfunction, Defendant shall submit to EPA a written report notifying EPA that the mechanical bar screen unit was repaired and describing the repair.

10. Defendant shall comply with Sections 301, 309 and 402 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311, 1319, 1342, as applicable to the Ponce Pump System.

#### VII. ADDITIONAL REMEDIAL ACTION

11. Defendant shall implement an additional remedial action ("ARA"), in accordance with all provisions of this Section and all plans, specifications and schedules prepared hereunder, including the schedule set forth in Appendix A of this Decree.

12. PRAC shall design and construct a safe drinking water supply system for the community of La Sapia, in the municipality of Orocovich, Puerto Rico, according to the schedule specified in Appendix A.

13. The purpose of these actions is to improve the quality of drinking water supplied to residents of the affected communities so that the drinking water supplies for these residents comply with the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j-26 ("SDWA").

14. Funds disbursed from the Performance Escrow Account ("PEA"), created and capitalized pursuant to Section IX below, shall be used to pay Eligible ARA Costs only. "Eligible ARA Costs" include only costs incurred by PRAC in achieving the satisfactory completion of the ARA, as defined in Paragraph 15. Eligible ARA Costs do not include costs incurred by PRAC for its own employees' time and salary, its own inventory on hand, its own overhead and administrative costs, legal fees, and oversight of contractors.

15. Defendant shall achieve the satisfactory completion of the ARA in accordance with the requirements of this Decree. "Satisfactory completion" of the ARA shall mean:

a. designing and constructing a connection between La Sapia and PRASA's drinking water distribution system capable of supplying safe drinking water for all citizens of La Sapia, in accordance with the specifications and schedule set forth in Appendix A of this Decree, including any modification thereof;

b. ensuring that such design and construction are performed in accordance with all applicable federal, Commonwealth and local statutes, regulations, standards, ordinances and other requirements; and

c. timely and fully completing all other work required under this Section and Appendix A of this Decree, including work described in any plans, specifications and schedules prepared thereunder, and any modifications thereof.

16. Defendant may contract with one or more contractor(s) for performance of the ARA, as provided herein, but Defendant shall remain responsible under this Decree for the satisfactory completion of the ARA.

17. Defendant hereby certifies that, as of the date of execution by Defendant of this Decree each of the following is true and accurate:

a. that all cost information provided to the United States in connection with EPA's approval of the ARA is complete and accurate and represents a fair estimate of the costs necessary to implement the ARA;

b. that Defendant is not required to perform or develop the ARA, or any portion thereof, by any federal, state, or local law or regulation and is not required to perform or develop the ARA by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that neither the ARA nor any portion thereof, is an action that Defendant was planning or intending to take other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received, is not presently negotiating to receive, and will not accept, any credit for the ARA in any other enforcement action; and

e. that Defendant has not received, and will not receive, any reimbursement for any portion of the ARA from any other person.

18. If the Parties agree that the ARA, or any portion thereof, required pursuant to this Decree is no longer necessary because safe drinking water is being supplied by other means to the target community, then the Parties may agree to modify this Decree, pursuant to Section

XXII (Modification), to require the performance by Defendant of an alternative environmentally beneficial project that Defendant is not otherwise legally required to perform.

#### VIII. PERMITS

19. Where any obligation under Section VII (Additional Remedial Action) requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit a timely and complete application therefor and take all other actions necessary to obtain any such permit or approval. Defendant may seek relief under Section XIV (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, provided that Defendant has submitted a timely and complete application and has taken all other actions necessary to obtain any such permit or approval.

#### IX. PERFORMANCE ESCROW ACCOUNT

20. No later than March 14, 2006, Defendant shall establish an escrow account ("PEA") bearing interest on commercially reasonable terms ("PEA Interest") in a federally chartered bank doing business in the Commonwealth, and shall deposit \$1,500,000.00 into the PEA. The amount deposited into the PEA shall not be construed as a cap on the amount that may be required for the satisfactory completion of the ARA pursuant to Section VII. Defendant's selection of an escrow agent for the PEA ("PEA Agent"), and any agreement between Defendant and the PEA Agent ("PEA Agreement"), or modification thereof, shall be subject to the prior written approval of the United States. No later than 10 days after the PEA Agent's appointment, Defendant shall provide the PEA Agent with a copy of this Decree. Defendant shall immediately notify the United States in writing of the creation and funding of the PEA. Such notice shall include the identity and location

of the bank at which the PEA is established and the account number and name, address and phone number of PEA Agent and other identifying information. Funds in the PEA shall not be used to pay any fees, costs, taxes, and charges associated with the PEA.

21. The funds in the PEA, including all accrued PEA interest, shall be used solely to fund the performance of the ARA pursuant to Section VII. Any funds remaining in the PEA, including any accrued PEA interest, shall be disbursed to Defendant after the earlier of (a) the date of termination of this Decree pursuant to Section XXIII and (b) the date of EPA's notice of satisfactory completion of the ARA pursuant to Section VII.

22. If the funds remaining in the PEA are insufficient to cover the costs of those actions, Defendant shall nonetheless remain obligated to fund and perform those actions in accordance with this Decree.

23. Funds in the PEA shall be disbursed in accordance with a PEA Agreement in substantially the same form as the agreement attached hereto as Appendix B. The PEA Agreement shall not be finalized unless and until it has been reviewed and approved in writing by the United States.

24. Defendant shall not use federal grant funds, or other federal funds, to plan or implement all or a portion of any actions required with respect to the ARA pursuant to Section VII and Appendix A of this Consent Decree.

#### X. COMPLIANCE ESCROW ACCOUNT

25. No later than March 14, 2006, Defendant shall establish an escrow account ("CEA") bearing interest on commercially reasonable terms ("CEA Interest") in a federally chartered bank doing business in the Commonwealth and shall deposit \$1,500,000.00 into the CEA. Defendant's



selection of an escrow agent for the CEA ("CEA Agent"), and any agreement between Defendant and the CEA Agent ("CEA Agreement"), or modification thereof, shall be subject to the prior written approval of the United States, in accordance with Paragraph 29 below. Within 10 days after the CEA Agent's appointment, Defendant shall provide the CEA Agent with a copy of this Decree. Defendant shall immediately notify the United States in writing of the creation and funding of the CEA. Such notice shall include the identity and location of the bank at which the CEA is established and the account number and name, address and phone number of CEA Agent and other identifying information. Funds in the CEA shall not be used to pay any fees, costs, taxes, and charges associated with the CEA.

26. All accrued CEA Interest shall be applied to the principle in the CEA. The funds in the CEA, including CEA Interest, may be used only to make payments to Defendant or to the United States, as provided in Section XIII (Stipulated Penalties) and this Section.

27. Any Stipulated Penalties owed by Defendant pursuant to Section XIII (Stipulated Penalties) shall be paid from the CEA by the CEA Agent to the extent funds are available in the CEA. The lack of funds in the CEA shall not excuse Defendant's obligation to pay stipulated penalties pursuant to Section XIII.

28. Upon Defendant's satisfactory completion of each milestone specified in Table 1 below, the CEA Agent shall pay to Defendant the corresponding payment amount in Table 1. The payment shall be made within 10 days after receipt by the CEA Agent of written notice from EPA that the milestone has been satisfactorily completed.

Table 1: CEA Reimbursement Schedule

<u>Milestone</u>	<u>Payment Amount</u>
Submission to EPA of notice of selection of satisfactory ARA design firm	Any excess in CEA over \$1,425,000.00
Submission to EPA of satisfactory ARA conceptual design	Any excess in CEA over \$1,275,000.00
Submission to EPA of satisfactory ARA final design	Any excess in CEA over \$1,200,000.00
Submission to EPA of the ARA Construction Permit	Any excess in CEA over \$1,125,000.00
Submission to EPA of notice of selection of satisfactory ARA Contractor	Any excess in CEA over \$1,050,000.00
Commencement of ARA construction	Any excess in CEA over \$900,000.00
Satisfactory completion of ARA construction	Any excess in CEA over \$600,000.00
Commencement of satisfactory operation	Any excess in CEA over \$450,000.00
Submission to EPA of satisfactory completion report	Any excess in CEA over \$300,000.00
EPA notice of satisfactory completion	Any funds remaining in CEA

29. Funds in the CEA shall be disbursed in accordance with a CEA Agreement in substantially the same form as the agreement attached hereto as Appendix C. The CEA Agreement shall not be finalized unless and until it has been reviewed and approved in writing by EPA.

#### XI. OVERSIGHT, REPORTING AND CERTIFICATIONS

30. Field Inspector. Defendant certifies that: (a) as of the date of execution by the Parties of this Decree, Defendant has created and filled the position of Field Inspector; (b) the Field Inspector is and shall be an employee or agent of Defendant responsible for ensuring that Defendant

complies with this Decree; and (c) the Field Inspector is and shall be a Responsible Official as defined in Paragraph 7.u of Section IV (Definitions). The Field Inspector shall report directly to the Secretary of PRAC. Defendant shall retain this Field Inspector position during the pendency of this Decree.

31. Quarterly Reports. Within 10 days after the end of each Calendar Quarter, from the date of lodging of this Decree until the deadline for submission of the ARA Completion Report pursuant to Paragraph 33, Defendant shall submit to the United States a status report regarding Defendant's compliance with Section VI (Corrective Actions), Section VII (Additional Remedial Action) and Appendix A of this Decree, and any modifications thereof (collectively, "Injunctive Provisions"), during the preceding calendar-year quarter ("Quarterly Reports"). Each Quarterly Report shall, at a minimum, contain:

- a. a description of the actions taken by Defendant during the previous Calendar Quarter in order to meet the requirements of the Injunctive Provisions of this Decree, including the date (day, month and year) of completion of each such action and the Paragraph number and/or letter of the Decree obligation with which the action was intended to comply;
- b. a description of any impediments encountered by Defendant in timely meeting the requirements of the Injunctive Provisions of this Decree and the steps taken by Defendant to overcome such impediments;
- c. the identification of the specific actions remaining to be accomplished in order to comply with the Injunctive Provisions of this Decree, including citations to the numbers and/or letters of Paragraphs requiring such actions, and the anticipated date on which each such action is expected to be accomplished; and

d. a list of any penalties paid pursuant to Section XIII (Stipulated Penalties), including the identification (by number and/or letter) of each Paragraph of the Injunctive Provisions that was not complied with or was violated, the number of days each such Section and Paragraph was not complied with or was violated, and a breakdown of the penalty amount paid for violations of each such Paragraph.

32. Quarterly Meetings. Upon EPA's request, Defendant shall participate in a status conference ("Quarterly Meeting") at EPA's Offices located at the Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico, or at another place agreed upon in writing by the Parties. The Quarterly Meeting shall be held within 10 days after EPA's request, or at another time agreed upon in writing by the Parties. Defendant's representatives, including the Field Inspector and, unless otherwise agreed in writing by EPA, at least one representative from the primary contractor for the ARA, shall be present for and participate in each Quarterly Meeting.

33. ARA Completion Report. Within 30 days after completion of the ARA, Defendant shall submit an ARA Completion Report to the United States, in accordance with Section XIX (Notices). Such reports shall each contain the following information:

- a. A detailed description of the ARA, as implemented;
- b. A description of any problems encountered in completing the ARA and the solutions thereto;
- c. A certification that the ARA has been completed pursuant to the provisions of this Decree, including the date of such completion;
- d. An itemized list of all costs expended on the ARA, with supporting documentation including copies of purchase orders and receipts or canceled checks, including

sufficiently detailed information and documentation for EPA to be able to determine whether the costs expended on the ARA qualify as Eligible ARA Costs under Paragraph 14; and

e. A description of the environmental and public health benefits resulting from implementation of the ARA (with a quantification of the benefits and pollutant reductions, if feasible).

34. EPA may request information or documentation in addition to that described in Paragraph 33, in order to determine whether the ARA has been completed satisfactorily, and Defendant shall make best efforts to provide such information or documentation as soon as possible but no later than 20 days after EPA's request, unless otherwise agreed in writing by EPA.

35. After receiving the ARA Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the ARA. If the ARA has not been satisfactorily completed in accordance with this Decree, and with all applicable work plans and schedules, Stipulated penalties may be assessed under Section XIII of this Consent Decree.

36. Any disputes between the Parties concerning the satisfactory completion of the ARA, the amount of costs expended thereon, and the termination of this Decree may be resolved under Section XV (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

37. Each submission required under this Section shall be signed by a PRAC official with knowledge of the ARA as implemented (e.g., the Field Inspector) and shall bear the certification language set forth in Paragraph 38.

38. Submission of Certifications. All reports, certifications and other submissions required to be submitted pursuant to this Decree shall be signed by a Responsible Official of Defendant, and shall contain the following certification:

I certify under penalty of law that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the responsible official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

39. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the ARA, or any portion thereof, shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Puerto Rico Administration of Corrections, Civil Action No. 90-2119 (D.P.R.), taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act, 33 U.S.C. §§ 1251-1387."

40. Compliance Information Certifications. Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. conducted a thorough, comprehensive, good faith search for Compliance Information, and has fully and accurately disclosed to the United States, all Compliance Information in its possession, custody or control, or in the possession of its officers, directors, employees, contractors or agents;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any Compliance Information;

c. fully complied with any and all EPA requests for Compliance Information, or other documents or information; and

d. submitted to the United States all Compliance Information in its possession, custody or control.

41. The reporting, certification and other requirements of this Decree do not relieve Defendant of its obligation to submit reports or information required by the Act, the regulations promulgated thereunder, or any other federal, state or local law or regulation.

## XII. APPROVAL OF DELIVERABLES

42. After review of any plan, report, certification, or other item that is required to be submitted to EPA or to the United States pursuant to this Consent Decree, EPA may in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

43. If EPA approves the submission pursuant to Paragraph 42.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 42.b or 42.c, Defendant shall, upon written direction of EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XV (Dispute Resolution).

44. If the submission is disapproved in whole or in part pursuant to Paragraph 42.c or 42.d, Defendant shall, within 30 days or such other time as the Parties may agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with this Section, above. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

45. Any stipulated penalties applicable to the original submission, as provided in Section XIII (Stipulated Penalties), shall accrue during the 30-day period, or other period agreed to in writing by the Parties, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

46. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with this Section, above, or may itself correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek Stipulated penalties as provided in this Section, above.

### XIII. STIPULATED PENALTIES

47. If Defendant fails to pay the stipulated penalty under Section V (Stipulated Penalty for Noncompliance with 1997 Decree), Defendant shall pay an additional stipulated penalty of \$1,000.00 per day for each day that the payment is late. Late payment of the stipulated penalty required under Section V shall be made in accordance with Paragraph 8. All other Stipulated penalties required under this Section shall be paid in accordance with Paragraph 55. All transmittal correspondence shall state that any such payment is for late payment of the stipulated penalty due.



under this Decree, or for Stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 55.

48. Defendant shall be liable for Stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section XIX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

49. If Defendant has completed the ARA, but the ARA, or any portion thereof, is not satisfactory, as provided in the definition of "satisfactory completion" in Paragraph 15, Defendant shall pay \$250,000.00, in addition to any other penalties required under this Section.

50. During the effective period of this Decree, Defendant shall pay to the United States stipulated penalties for violations of this Decree, as follows:

a. \$1,000.00 per day per violation for each day that Defendant fails to timely create the PEA or CEA, or fails to timely or fully fund the PEA or CEA, as provided in Section IX (Performance Escrow Account) or X (Compliance Escrow Account), respectively;

b. \$1,000.00 per day per violation for each day that Defendant fails to meet any requirement set forth in Section VII (Additional Remedial Action);

c. \$500.00 per day per violation for failure to timely submit any report or certification required by this Decree.

51. Subject to the provisions of Paragraph 50, Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the

violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

52. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated penalties otherwise due it under this Consent Decree.

53. Stipulated penalties shall continue to accrue as provided in Paragraph 51, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. if the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 60 days of the Effective Date of the agreement or the receipt of EPA's decision or order, unless otherwise provided by such agreement with or decision of EPA;

b. if the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Paragraph 53.c;

c. if any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 60 days of receiving the final appellate court decision.

54. Defendant shall pay Stipulated Penalties for any violations of this Consent Decree occurring between the date of lodging and the Effective Date of this Consent Decree no later than 30 days after the Effective Date of this Decree.

55. Defendant shall, as directed by the United States in its demand, pay Stipulated Penalties owing to the United States under this Section by EFT in accordance with Paragraph 8 or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-3364/1 and United States Attorney's Office file number 1990V0091, and delivered to the office of the United States Attorney, District of Puerto Rico, at the following address:

U.S. Attorney's Office  
ATTN: FLU Unit  
Torre Chardon, Suite 1201  
350 Carlos Chardon Avenue  
San Juan, PR 00918

56. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided in 28 U.S.C. § 1961, accruing as of the date payment became due.

57. Subject to the provisions of Section XVII (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Decree or applicable law. Where a violation of this Decree is also a violation of Sections 301, 308, 309 and 402 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311, 1318, 1319, 1342, Defendant shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

#### XIV. FORCE MAJEURE

58. A “force majeure event” is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Decree despite Defendant’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Decree.

59. Defendant shall provide notice to the United States orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XIX (Notices), within 15 days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant’s past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant’s rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

60. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the

United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XXII (Modification).

61. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section XV of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 59; that the force majeure event caused any delay Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

#### XV. DISPUTE RESOLUTION

62. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

63. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States

shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

64. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

65. The United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

66. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIX (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 15 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Decree.

67. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

68. In any dispute brought under Paragraph 66, Defendant shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Act and that Defendant is entitled to relief under applicable law. The United States' position shall be reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

69. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 53. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XIII (Stipulated Penalties).

#### XVI. INFORMATION COLLECTION AND RETENTION

70. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Decree.

71. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant at the ARA or Ponce facilities, related to compliance by Defendant with the Act or this Decree. Upon request, EPA shall provide Defendant splits of any samples taken by EPA at the ARA or Ponce facilities, related to compliance by Defendant with the Act or this Decree.

72. Until five years after the termination of this Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States may request copies of any documents, records, or other information required to be maintained under this Paragraph.

73. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph, and, upon request by the United States, Defendant shall deliver any such documents, records, or



other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

74. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

75. Defendant shall establish a central document repository in the office of the Field Inspector. Defendant shall place in this repository all records, logs, and documents referenced in Paragraphs 72 and 73 within seven days after the date of their creation or receipt by Defendant. Defendant shall provide access to such document repository, and shall make available the originals and make copies of any materials contained therein, to the United States upon demand.

76. This Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information, imposed by applicable federal or state laws, regulations, or permits.

## XVII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

77. The 1997 Decree shall continue in effect until the Effective Date of this Consent Decree (as defined in Paragraph 88, below). Upon the Effective Date of this Consent Decree, the 1997 Decree is terminated and superceded in its entirety by this Decree.

78. This Decree resolves the civil claims of the United States for the violations alleged in the Complaint and Supplemental Complaint filed in this action through the date of lodging of this Decree.

79. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, and Defendant reserves all legal and equitable defenses, except as expressly stated herein. This Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising from Defendant's activities at or in connection with its Ponce and ARA facilities, whether related to the violations addressed in this Consent Decree or otherwise.

80. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the facilities, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in this action.

81. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, State, or local laws, regulations, or permits. This Decree shall not be construed to constitute EPA approval of the actions taken or the equipment or technology installed by Defendant in connection with the ARA undertaken by Defendant under the terms of this Decree.

82. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Defendant, except as otherwise provided by law.

83. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XVIII. COSTS

84. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys fees') incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendant.

## XIX. NOTICES

85. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent via facsimile and regular U.S. mail, overnight express mail, hand delivery or e-mailed .pdf file, as follows:

### To the United States:

Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

#### *For overnight express mail or hand delivery only:*

ENRD Mailroom, Room 2121  
601 D Street, N.W.  
Washington, D.C. 20004

#### *For regular U.S. mail only:*

P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

United States Attorney  
District of Puerto Rico  
Torre Chardón, Suite 1201  
350 Carlos Chardón Avenue  
San Juan, Puerto Rico 00918

Chief, Enforcement & Superfund Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127

Chief, Water & General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

To EPA:

Chief, Enforcement & Superfund Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127

Chief, Water & General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

To Defendant:

Administrator  
Puerto Rico Administration of Corrections  
G.P.O. Call Box 71308  
San Juan, Puerto Rico 00936

Director  
Legal Affairs Office  
Puerto Rico Administration of Corrections  
G.P.O. Call Box 71308  
San Juan, Puerto Rico 00936

Counsel for PRAC  
Commonwealth of Puerto Rico  
Department of Justice  
Civil Rights Legal Task Force  
818 Ponce de León Avenue, 3rd Floor  
San Juan, Puerto Rico 00907

86. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above.

87. Notices, submissions and communications required pursuant to this Decree shall be deemed submitted upon mailing or electronic transmission, unless otherwise provided in this Decree (e.g., payments) or by mutual agreement of the Parties in writing.

#### XX. EFFECTIVE DATE

88. The Effective Date shall be the date upon which this Decree is entered by the Court.

#### XXI. RETENTION OF JURISDICTION

89. The Court shall retain jurisdiction over this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XV (Dispute Resolution) and XXII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### XXII. MODIFICATION

90. The terms of this Decree, or of any plans, specifications or schedules submitted hereunder, and the community for which the ARA is to be completed, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

#### XXIII. TERMINATION

91. After Defendant has complied with all requirements of this Decree, including those relating to the ARA required by Section VII, paid the stipulated penalty for past noncompliance required by Section V and any additional Stipulated Penalties required by Section XIII, and for six months has maintained continuous satisfactory compliance with the requirements of the Act, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

92. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree should be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

93. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XV. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 64 of Section XV, until 60 days after service of its Request for Termination.

#### XXIV. PUBLIC PARTICIPATION

94. This Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Decree without further notice.

#### XXV. SIGNATORIES/SERVICE

95. Each undersigned representative of Defendant and the Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the U.S. Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

96. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

97. Defendant agrees not to oppose entry of this Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Defendant in writing that it no longer supports entry of this Decree.

98. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XXVI. INTEGRATION

99. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### XXVII. FINAL JUDGMENT

100. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States and Defendant.



XXVIII. APPENDICES

101. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ARA Design and Construction Schedule.

“Appendix B” is a form of a Performance Escrow Agreement.

“Appendix C” is a form of a Compliance Escrow Agreement.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_.

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UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Puerto Rico Administration of Corrections, Civil Action No. 90-2119 (D.P.R.).

FOR THE UNITED STATES OF AMERICA

Dated: 2/28/06

\_\_\_\_\_  
ELLEN MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

Dated: 2/28/06

\_\_\_\_\_  
DAVID L. WEIGERT  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-0133

HUMBERTO S. GARCÍA  
United States Attorney  
District of Puerto Rico

Dated: 3/8/06

\_\_\_\_\_  
For ISABEL MUÑOZ  
Assistant United States Attorney  
United States Attorney's Office  
Torre Chardón, Suite 1201  
350 Carlos Chardón Avenue  
San Juan, PR 00918  
(787) 282-1841

Dated: 3/6/06

ERIC SCHAAF  
Regional Counsel  
Office of Regional Counsel, Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, NY 10007-1866

Dated: 3/6/06

ALAN J. STEINBERG  
Regional Administrator, Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, NY 10007-1866

OF COUNSEL:

NINA DALE  
Assistant Regional Counsel  
Water and General Law Branch  
Office of Regional Counsel, Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
(212) 637-3231

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Puerto Rico Administration of Corrections, Civil Action No. 90-2119 (D.P.R.).

FOR DEFENDANT PUERTO RICO ADMINISTRATION OF  
CORRECTIONS

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. MIGUEL PEREIRA, ESQ.  
Secretary, Puerto Rico Administration of Corrections  
Metropolitan Professional Park, 9th Floor  
Road 21, Building 1781, KM 4.2  
Rio Piedras, PR 00971  
(787) 775-0020  
fax (787) 749-0470

ROBERTO J. SÁNCHEZ RAMOS  
Attorney General  
Commonwealth of Puerto Rico  
Puerto Rico Department of Justice

VIVIAN GONZÁLEZ MÉNDEZ  
Assistant Attorney General  
Puerto Rico Department of Justice

JOANN ESTADES BOYER  
Federal Litigation Division Director  
Puerto Rico Department of Justice

Dated: \_\_\_\_\_

~~\_\_\_\_\_  
ESTHER CRESPIN-CREDI, ESQ.  
Puerto Rico Department of Justice  
Civil Rights Legal Task Force  
818 Ponce de Leon Ave., 3rd Floor  
San Juan, PR 00907  
(787) 977-7717  
fax (787) 977-7729~~

Dated: 7-Marzo-06

\_\_\_\_\_  
WALESKA CASIANO, ESQ.  
Director, Legal Affairs Office  
Puerto Rico Administration of Corrections  
Metropolitan Professional Park, 4th Floor  
Road 21, Building 1781, KM 4.2  
Rio Piedras, PR 00971  
(787) 782-5985  
fax (787) 277-0551

## APPENDIX A

### ARA Design and Construction Schedule

No.	Action Item	Deadline	Required Action
1	ARA Design Firm Selection	January 20, 2006	Submit to EPA the name, address, phone number and proposal of the (each of) its selected contractor(s) for the design of the ARA ("ARA Design Contractor(s)").
2	ARA Conceptual Design	January 20, 2006	Submit to EPA for approval the conceptual design for the ARA ("Conceptual Design"), including at least: <ol style="list-style-type: none"><li>1. a schematic of the pipelines and other components of the connection of La Sapia to PRASA's regional drinking water distribution system;</li><li>2. a determination of design flows;</li><li>3. a description of all work necessary to complete the connection, design and construction schedules, and environmental studies;</li><li>4. the estimated cost of the ARA;</li><li>5. a list of milestones in the performance of the ARA;</li><li>6. a schedule for performing the ARA, including a schedule for each milestone; and</li><li>7. a description of the benefits that will result from the ARA, including estimates (quantified, if possible) of any drinking water quality enhancements likely to be achieved.</li></ol>
3	ARA Final Design	January 20, 2006	Submit to EPA the final design, including without limitation drawings and design specifications.
4	ARA Permit & Endorsement Applications	April 1, 2006	Submit applications for all permits and endorsements required by federal, state and local law or regulation, including without limitation: <ol style="list-style-type: none"><li>1. Junta de Planificación ("Puerto Rico Planning Board") Consultation;</li><li>2. Autoridad de Acueductos y Alcantarillados de Puerto Rico ("Puerto Rico Aqueduct and Sewer Authority" or "PRASA") final design approval and endorsement;</li><li>3. Autoridad de Energía Eléctrica ("Puerto Rico Electric Power Authority" or "PREPA") design approval and endorsement;</li><li>4. Junta de Calidad Ambiental ("Puerto Rico Environmental Quality Board" or "EQB") Environmental Assessment approval; and</li><li>5. Administración de Reglamentos y Permisos ("ARPE" or "Puerto Rico Regulation and Permits Administration") construction permit.</li></ol>

5	ARA Construction Permit	June 30, 2006	Submit to EPA a copy of the construction permit issued by ARPE.
6	ARA Contractor Notification	November 30, 2006	Submit to EPA the name, address, phone number, and proposal of (each of) its selected ARA Construction Contractor(s), the construction contract(s), and milestones for performing the ARA.
7	ARA Environmental Permit Applications	December 15, 2006	Submit applications for all environmental permits required by EQB, including without limitation: <ol style="list-style-type: none"> <li>1. EQB Erosion and Sediment Control ("Permiso para el Control de Erosión y Sedimentación" or "CES");</li> <li>2. EQB Dust Control ("Permiso de Aire para el Control de Polvo Fugitivo"); and</li> <li>3. EQB Solid Waste ("Permiso para el Manejo de Despedicios Sólidos No-Peligrosos").</li> </ol>
8	ARA Environmental Permits	February 1, 2007	Submit to EPA copies of all environmental permits required by EQB, including without limitation those for which an application must be submitted on December 15, 2006, as provided above.
9	ARA Commence Construction	February 1, 2007	Commence construction of the ARA, in accordance with the final design and design specifications, in accordance with the ARPE construction permit.
10	ARA Complete Construction	July 1, 2007	Complete construction in accordance with the final design and design specifications.
11	Commence Operations	September 1, 2007	Commence distribution of the safe drinking water to the La Sapia community.

**APPENDIX B**

**Form of Performance Escrow Agreement**



**ESCROW AGREEMENT**  
**for the Puerto Rico Administration of Corrections Performance Escrow Account**

**THIS ESCROW AGREEMENT** for the Puerto Rico Administration of Corrections (“PRAC”) Performance Escrow Account (“PEA Agreement”) is effective as of \_\_\_\_\_, 2006, by and between the Puerto Rico Administration of Corrections (“PRAC”) and \_\_\_\_\_ Bank (“PEA Agent”) (collectively, the “Parties”).

**RECITALS**

A. On \_\_\_\_\_, \_\_\_\_\_, the United States District Court for the District of Puerto Rico entered a Second Modified Consent Decree between PRAC and the United States of America (“United States”), on behalf of the U.S. Environmental Protection Agency (“EPA”), in United States v. Puerto Rico Administration of Corrections, Civil Action No. 90-2119 (D.P.R.) (“Decree”), a copy of which is attached hereto as Exhibit A.

B. Section IX of the Decree requires PRAC to establish an escrow account, known as the “Performance Escrow Account” or “PEA,” bearing interest on commercially reasonable terms (“PEA Interest”) in a federally chartered bank doing business in the Commonwealth of Puerto Rico (“Commonwealth”).

C. The Decree requires PRAC to deposit \$1,500,000.00 into the PEA.

D. The Decree requires that Defendant's selection of an escrow agent for the PEA (“PEA Agent”) and any PEA Agreement, or modification thereof, shall be subject to the prior written approval of the United States.

E. The Decree provides that funds in the PEA shall be used exclusively for the funding of the Additional Remedial Action (“ARA”) required by Section VII of the Decree.

**NOW, THEREFORE**, in consideration of the promises and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Establishment and Funding of PEA. The term “PEA” shall mean the escrow account established by this PEA Agreement. PRAC shall deposit \$1,500,000.00 into the PEA, pursuant to Section IX of the Decree.

2. Purpose. The purpose of the PEA is to receive, hold and manage funds in an interest-bearing account and to disburse those funds and accrued interest as necessary to fund the performance of injunctive relief, known as the “Additional Remedial Action” or “ARA,” as required by the Decree, including any modification thereof. The United States is a third-party beneficiary of this PEA Agreement and of the PEA established and managed hereunder.

3. Definitions. All terms in this PEA Agreement shall have the same meaning as provided in the Decree, unless specified otherwise.

4. Controlling Authority. In the event of a conflict between the Decree and this PEA Agreement, the Decree shall control.

5. Appointment of PEA Agent. PRAC, with the approval of the United States, hereby appoints the PEA Agent to act as escrow agent under this PEA Agreement and the PEA Agent accepts that appointment.

6. Investment of PEA Funds. The PEA Agent shall hold and invest all PEA funds in a manner designed to maximize returns while preserving the principal of the PEA, pursuant to instruction by PRAC, in accordance with federal, state and local laws and regulations. All earnings received from the investment of PEA funds shall be added to the principal of the PEA.

7. Days. Unless otherwise stated herein, “day” shall mean calendar day.

8. Disbursements. Subject to Paragraph 7 below and the last sentence of this Paragraph, individual disbursements from the PEA shall be made only as instructed in writing by PRAC, using a Disbursement Certificate and Instructions, in substantially the form attached hereto as Exhibit B. Disbursements shall be made no sooner than 10 business days after receipt by the PEA Agent of a Disbursement Certificate. Notwithstanding the first two sentences of this Paragraph, if during such 10-day period EPA sends to the PEA Agent a written notice disapproving all or a portion of the disbursement, then the PEA Agent shall disburse only the approved amount (if any), not the disapproved amount.

9. Refund. Any funds remaining in the PEA after termination of the Decree pursuant to Section XXIII thereof, including any accrued PEA interest, shall be disbursed to PRAC in accordance with Paragraph 21 of the Decree.

10. Statement of Receipts. The PEA Agent shall acknowledge its receipt of amounts deposited into the PEA by PRAC by sending written notice to PRAC and the United States within 5 business days of such receipt. Each such notice shall include, at a minimum, the date and amount of the deposit.

11. Monthly Report. Within 30 days after the execution of this PEA Agreement, and monthly thereafter until the termination of this PEA Agreement, the PEA Agent shall submit to PRAC and the United States a report (“Monthly Report”) regarding the status of the PEA assets. Each Monthly Report shall include at a minimum an accounting of any PEA assets received, held, managed, invested, re-invested or disbursed during the previous month, in accordance with generally accepted accounting procedures. Each Monthly Report shall be sent to PRAC and the United States as provided in Paragraph 15.

12. PEA Escrow Agent’s Fees. The PEA Agent shall be entitled to receive a fee of \$\_\_\_\_\_ per year for its services hereunder. Such fee shall be binding upon the PEA Agent, and any change to the fee shall become effective only upon the written approval of

PRAC and the United States. The fee is due and payable by PRAC upon execution of this Escrow Agreement. If the PEA Agent resigns pursuant to Paragraph 12 of this PEA Agreement, or suspends performance of its duties pursuant to Paragraph 13, the PEA Agent shall refund to PRAC any unearned portion of that fee.

13. Taxes and Expenses. Any taxes, tax penalties, or other expenses incurred with respect to the PEA shall be the responsibility of PRAC. No amount shall be deducted from the PEA assets for any tax liability.

14. PEA Agent Resignation, Removal, Succession. The PEA Agent shall have the right to resign as PEA Agent hereunder by sending a written notice to PRAC and the United States no less than 30 days prior to the resignation date. PRAC and EPA shall each have the right, with the written approval of the other, to remove the PEA Agent at any time by joint written notice delivered to the PEA Agent. If the PEA Agent resigns or is removed, a successor PEA Agent shall be appointed by mutual agreement of PRAC and EPA. Resignation or removal of the PEA Agent shall take effect upon the appointment of a successor. Any successor PEA Agent at any time serving hereunder shall be bound by all duties and shall have all rights, powers and indemnities of the PEA Agent hereunder as if it was the PEA Agent originally named herein.

15. PEA Agent Liability and Indemnification. So long as the PEA Agent acts in good faith and in the exercise of its best judgment, the PEA Agent shall not be in any manner liable or responsible for the sufficiency, correctness, genuineness or validity of any instruments deposited with it or with reference to the form of execution thereof, or the identity, authority, or rights of any person executing or depositing same, and the PEA Agent shall not be liable for any loss that may occur by reason of forgery, false representation, or the exercise of its discretion in any particular manner or for any other reason, except for its own negligence, gross negligence, willful misconduct, bad faith, or breach of this PEA Agreement. Except in instances of the PEA Agent's own negligence, gross negligence or willful misconduct, PRAC shall indemnify, defend, and hold the PEA Agent harmless from any demands, suits or causes of action arising out of this PEA Agreement.

16. Governing Law. This PEA Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth.

17. Notices. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this PEA Agreement, they shall be made in writing and sent via facsimile and regular U.S. mail, overnight express mail, hand delivery or e-mailed .pdf file, as follows:

To the United States:

Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

*For overnight express mail or hand delivery only:*  
ENRD Mailroom, Room 2121  
601 D Street, N.W.  
Washington, D.C. 20004

*For regular U.S. mail only:*  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

United States Attorney  
District of Puerto Rico  
Torre Chardón, Suite 1201  
350 Carlos Chardón Avenue  
San Juan, Puerto Rico 00918

Chief, Enforcement & Superfund Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127

Chief, Water & General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

To EPA:

Chief, Enforcement & Superfund Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127

Chief, Water & General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

To Defendant (i.e., PRAC):

Administrator  
Puerto Rico Administration of Corrections  
G.P.O. Call Box 71308  
San Juan, Puerto Rico 00936

Director  
Legal Affairs Office  
Puerto Rico Administration of Corrections  
G.P.O. Call Box 71308  
San Juan, Puerto Rico 00936

Counsel for PRAC  
Commonwealth of Puerto Rico  
Department of Justice  
Civil Rights Legal Task Force  
818 Ponce de León Avenue, 3rd Floor  
San Juan, Puerto Rico 00907

To PEA Agent:

[NAME, TITLE & ADDRESS]

Any Party, the United States (including EPA) may, by written notice to the other Parties and the United States, change its designated notice recipient(s) or notice address(es) provided above.

18. Counterparts. This PEA Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Modification. This PEA Agreement may be modified only by the written consent of the Parties and of the United States.

20. Termination. This PEA Agreement shall terminate upon the disbursement of all of the funds in the PEA in accordance with the provisions of this PEA Agreement.

IN WITNESS WHEREOF, the Parties have executed their PEA Agreement as of the date first written above.

FOR DEFENDANT PUERTO RICO ADMINISTRATION  
OF CORRECTIONS

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. MIGUEL PEREIRA, ESQ.  
Secretary, Puerto Rico Administration of Corrections  
Metropolitan Professional Park, 9th Floor  
Road 21, Building 1781, KM 4.2  
Rio Piedras, PR 00971  
(787) 775-0020  
fax (787) 749-0470

Dated: \_\_\_\_\_

\_\_\_\_\_  
ESTHER CRESPIN-CREDI, ESQ.  
Puerto Rico Department of Justice  
Civil Rights Legal Task Force  
818 Ponce de Leon Ave., 3rd Floor  
San Juan, PR 00907  
(787) 977-7717  
fax (787) 977-7729

Dated: \_\_\_\_\_

\_\_\_\_\_  
WALESKA CASIANO, ESQ.  
Director, Legal Affairs Office  
Puerto Rico Administration of Corrections  
Metropolitan Professional Park, 4th Floor  
Road 21, Building 1781, KM 4.2  
Rio Piedras, PR 00971  
(787) 782-5985  
fax (787) 277-0551

FOR \_\_\_\_\_ BANK

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**Consent Decree**

## **EXHIBIT B**

### **Form of Disbursement Certificate and Instructions for Puerto Rico Administration of Corrections Performance Escrow Account**

#### **DISBURSEMENT CERTIFICATE AND INSTRUCTIONS**

This Performance Escrow Account ("PEA") Disbursement Certificate and Instructions ("Certificate") constitutes PRAC PEA Certificate No. \_\_\_\_\_.

(A separate sequential number shall be assigned to each separate Certificate.)

#### **Certificate**

Reference is made to the escrow agreement for the Puerto Rico Administration of Corrections ("PRAC") Performance Escrow Account ("PEA Agreement"), dated \_\_\_\_\_, by and among PRAC and \_\_\_\_\_ Bank ("PEA Agent").

The undersigned, duly-authorized representative of PRAC hereby certifies that: (i) the disbursement requested by this Certificate is for payment of costs actually incurred in performing the Additional Remedial Action ("ARA") pursuant to the Second Modified Consent Decree between PRAC and the United States, in United States v. Puerto Rico Administration of Corrections, Civil Action No. 90-2119 (D.P.R.) ("Decree"), a copy of which is attached to the body of the PEA Agreement as Exhibit A; (ii) PRAC has notified the United States of its intention to submit this Certificate to the PEA Agent; and (iii) PRAC will send a copy of this Certificate to the United States, in accordance with Paragraph 15 (Notices) of the PEA Agreement, at the same time as it delivers the original to the PEA Agent.

#### **Instructions**

EPA is authorized under the PEA Agreement to disapprove the disbursement instruction contained in this Certificate within 10 business days after its receipt by the PEA Agent.

No sooner than 10 business days after receipt of this Certificate, you are instructed to disburse from the PEA the amount set forth below to the Payee identified below, as payment of the invoice attached hereto; provided, however, that such disbursement shall not be made if during such 10-day period EPA sends to the PEA Agent a written notice disapproving all or a portion of the disbursement, then the PEA Agent shall disburse only the approved amount (if any), not the disapproved amount.

Payment Amount:                      \$ \_\_\_\_\_



Payee:

\_\_\_\_\_  
[Name of Responsible Official]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Company Name]

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Phone Number]

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Responsible Official]  
Puerto Rico Administration of Corrections

**APPENDIX C**

**Form of Compliance Escrow Agreement**

## **ESCROW AGREEMENT**

### **for the Puerto Rico Administration of Corrections Compliance Escrow Account**

**THIS ESCROW AGREEMENT** for the Puerto Rico Administration of Corrections ("PRAC") Compliance Escrow Account ("CEA Agreement") is effective as of \_\_\_\_\_, 2006, by and between the Puerto Rico Administration of Corrections ("PRAC") and \_\_\_\_\_ Bank ("CEA Agent") (collectively, the "Parties").

## **RECITALS**

A. On \_\_\_\_\_, \_\_\_\_\_, the United States District Court for the District of Puerto Rico entered a Second Modified Consent Decree between PRAC and the United States of America ("United States"), on behalf of the U.S. Environmental Protection Agency ("EPA"), in United States v. Puerto Rico Administration of Corrections, Civil Action No. 90-2119 (D.P.R.) ("Decree"), a copy of which is attached hereto as Exhibit A.

B. Section X of the Decree requires PRAC to establish an escrow account, known as the "Compliance Escrow Account" or "CEA," bearing interest on commercially reasonable terms ("CEA Interest") in a federally chartered bank doing business in the Commonwealth of Puerto Rico ("Commonwealth").

C. The Decree requires PRAC to deposit \$1,500,000.00 into the CEA.

D. The Decree requires that Defendant's selection of an escrow agent for the CEA ("CEA Agent") and any CEA Agreement, or modification thereof, shall be subject to the prior written approval of the United States.

E. The Decree provides that any stipulated penalties owed by Defendant pursuant to Section XIII of the Decree shall be paid from the CEA to the extent funds are available therein.

**NOW, THEREFORE**, in consideration of the promises and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Establishment and Funding of CEA. The term "CEA" shall mean the escrow account established by this CEA Agreement. PRAC shall deposit \$1,500,000.00 into the CEA, pursuant to Section X of the Decree.

2. Purpose. The purpose of the CEA is to receive, hold and manage funds in an interest-bearing account and to disburse those funds and accrued interest to pay stipulated penalties due and owing by PRAC pursuant to Section XIII of the Decree, including any modification thereof. The United States is a third-party beneficiary of this CEA Agreement and the CEA established and managed hereunder.

3. Definitions. All terms in this PEA Agreement shall have the same meaning as provided in the Decree, unless specified otherwise.
4. Controlling Authority. In the event of a conflict between the Decree and this PEA Agreement, the Decree shall control.
5. Appointment of CEA Agent. PRAC, with the approval of the United States, hereby appoints the CEA Agent to act as escrow agent under this CEA Agreement and the CEA Agent accepts that appointment.
6. Investment of CEA Funds. The CEA Agent shall hold and invest all CEA funds in a manner designed to maximize returns while preserving the principal of the CEA, pursuant to instruction by PRAC, in accordance with federal, state and local laws and regulations. All earnings received from the investment of CEA funds shall be added to the principal of the CEA.
7. Days. Unless otherwise stated herein, "day" shall mean calendar day.
8. Disbursements. Subject to Paragraph 9 below and the last sentence of this Paragraph, individual disbursements from the CEA shall be made only as instructed in writing by PRAC, using a Disbursement Certificate and Instructions, in substantially the form attached hereto as Exhibit B. Disbursements shall be made no sooner than 10 business days after receipt by the CEA Agent of a Disbursement Certificate. Notwithstanding the first two sentences of this Paragraph, if during such 10-day period EPA sends to the CEA Agent a written notice disapproving all or a portion of the disbursement, then the CEA Agent shall disburse only the approved amount (if any), not the disapproved amount.
9. Refund. Any funds remaining in the CEA after termination of the Decree pursuant to Section XXIII thereof, including any accrued CEA interest, shall be disbursed to PRAC in accordance with Paragraph 28 of the Decree.
10. Statement of Receipts. The CEA Agent shall acknowledge its receipt of amounts deposited into the CEA by PRAC by sending written notice to PRAC and the United States within 5 business days of such receipt. Each such notice shall include, at a minimum, the date and amount of the deposit.
11. Monthly Report. Within 30 days after the execution of this CEA Agreement, and monthly thereafter until the termination of this CEA Agreement, the CEA Agent shall submit to PRAC and the United States a report ("Monthly Report") regarding the status of the CEA assets. Each Monthly Report shall include at a minimum an accounting of any CEA assets received, held, managed, invested, re-invested or disbursed during the previous month, in accordance with generally accepted accounting procedures. Each Monthly Report shall be sent to PRAC and the United States as provided in Paragraph 17.

12. CEA Escrow Agent's Fees. The CEA Agent shall be entitled to receive a fee of \$ \_\_\_\_\_ per year for its services hereunder. Such fee shall be binding upon the CEA Agent, and any change to the fee shall become effective only upon the written approval of PRAC and the United States. The fee is due and payable by PRAC upon execution of this Escrow Agreement. If the CEA Agent resigns pursuant to Paragraph 14 of this CEA Agreement, or suspends performance of its duties pursuant to Paragraph 15, the CEA Agent shall refund to PRAC any unearned portion of that fee.

13. Taxes and Expenses. Any taxes, tax penalties, or other expenses incurred with respect to the CEA shall be the responsibility of PRAC. No amount shall be deducted from the CEA assets for any tax liability.

14. CEA Agent Resignation, Removal, Succession. The CEA Agent shall have the right to resign as CEA Agent hereunder by sending a written notice to PRAC and the United States no less than 30 days prior to the resignation date. PRAC and EPA shall each have the right, with the written approval of the other, to remove the CEA Agent at any time by joint written notice delivered to the CEA Agent. If the CEA Agent resigns or is removed, a successor CEA Agent shall be appointed by mutual agreement of PRAC and EPA. Resignation or removal of the CEA Agent shall take effect upon the appointment of a successor. Any successor CEA Agent at any time serving hereunder shall be bound by all duties and shall have all rights, powers and indemnities of the CEA Agent hereunder as if it was the CEA Agent originally named herein.

15. CEA Agent Liability and Indemnification. So long as the CEA Agent acts in good faith and in the exercise of its best judgment, the CEA Agent shall not be in any manner liable or responsible for the sufficiency, correctness, genuineness or validity of any instruments deposited with it or with reference to the form of execution thereof, or the identity, authority, or rights of any person executing or depositing same, and the CEA Agent shall not be liable for any loss that may occur by reason of forgery, false representation, or the exercise of its discretion in any particular manner or for any other reason, except for its own negligence, gross negligence, willful misconduct, bad faith, or breach of this CEA Agreement. Except in instances of the CEA Agent's own negligence, gross negligence or willful misconduct, PRAC shall indemnify, defend, and hold the CEA Agent harmless from any demands, suits or causes of action arising out of this CEA Agreement.

16. Governing Law. This CEA Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico.

17. Notices. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this CEA Agreement, they shall be made in writing and sent via facsimile and regular U.S. mail, overnight express mail, hand delivery or e-mailed .pdf file, as follows:

To the United States:

Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

*For overnight express mail or hand delivery only:*

ENRD Mailroom, Room 2121  
601 D Street, N.W.  
Washington, D.C. 20004

*For regular U.S. mail only:*

P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

United States Attorney  
District of Puerto Rico  
Torre Chardón, Suite 1201  
350 Carlos Chardón Avenue  
San Juan, Puerto Rico 00918

Chief, Enforcement & Superfund Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127

Chief, Water & General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

To EPA:

Chief, Enforcement & Superfund Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127

Chief, Water & General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

To Defendant:

Administrator  
Puerto Rico Administration of Corrections  
G.P.O. Call Box 71308  
San Juan, Puerto Rico 00936

Director  
Legal Affairs Office  
Puerto Rico Administration of Corrections  
G.P.O. Call Box 71308  
San Juan, Puerto Rico 00936

Counsel for PRAC  
Commonwealth of Puerto Rico  
Department of Justice  
Civil Rights Legal Task Force  
818 Ponce de León Avenue, 3rd Floor  
San Juan, Puerto Rico 00907

To CEA Agent:

[NAME, TITLE & ADDRESS]

Any Party, the United States (including EPA) may, by written notice to the other Parties and the United States, change its designated notice recipient(s) or notice address(es) provided above.

Payee:

\_\_\_\_\_  
[Name of Responsible Official]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Company Name]

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Phone Number]

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Responsible Official]

Puerto Rico Administration of Corrections